

# PATENT COOPERATION TREATY

Rec'd PTO 06 FEB 2005  
From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY  
MUNICH

To:	ORDER	
	DIARY	
CLYDE-WATSON, Zoe D YOUNG & CO 21 New Fetter Lane London EC4A 1DA GRANDE BRETAGNE	REC'D (LONDON)	15 DEC 2004
	ANSO	
	ENTRY	ZCW
	FOR	

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SOUTH AFRICA

15 DEC 2004

PCT

## NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Rule 71.1)

Date of mailing (day/month/year)	13.12.2004
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Applicant's or agent's file reference  
P013875WO ZCW

## IMPORTANT NOTIFICATION

International application No. PCT/GB 03/03391	International filing date (day/month/year) 05.08.2003	Priority date (day/month/year) 05.08.2002
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Applicant  
PROTEXEON LIMITED et al.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

### 4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/I/B/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international preliminary examining authority:  
  
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 Tel. +49 89 2399 - 0 Tx: 523656 epmu d  
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**PATENT COOPERATION TREATY**  
**PCT**  
**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**  
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P013875WO ZCW	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/GB 03/03391	International filing date (day/month/year) 05.08.2003	Priority date (day/month/year) 05.08.2002
International Patent Classification (IPC) or both national classification and IPC A61K33/00		
Applicant PROTEXEON LIMITED et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
  - This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
These annexes consist of a total of sheets.
3. This report contains indications relating to the following items:
  - I  Basis of the opinion
  - II  Priority
  - III  Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV  Lack of unity of invention
  - V  Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI  Certain documents cited
  - VII  Certain defects in the international application
  - VIII  Certain observations on the international application

Date of submission of the demand  04.03.2004	Date of completion of this report  13.12.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Rodriguez-Palmero, M Telephone No. +49 89 2399-7871



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/GB 03/03391

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-21 as originally filed

**Claims, Numbers**

1-16 as originally filed

**Drawings, Sheets**

1/10-10/10 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/GB 03/03391

5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).  
*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*
6. Additional observations, if necessary:

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- the entire international application,
- claims Nos. 11-16 with respect to industrial applicability  
because:  
 the said international application, or the said claims Nos. 11-16 with respect to industrial applicability relate to the following subject matter which does not require an international preliminary examination (specify):  
**see separate sheet**
- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- no international search report has been established for the said claims Nos.
2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:
- the written form has not been furnished or does not comply with the Standard.
- the computer readable form has not been furnished or does not comply with the Standard.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes:	Claims	1-16
	No:	Claims	-
Inventive step (IS)	Yes:	Claims	1-16
	No:	Claims	-
Industrial applicability (IA)	Yes:	Claims	1-10
	No:	Claims	-

**2. Citations and explanations**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/GB 03/03391

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB 03/03391

**Re Item III**

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

Claims 11-16 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: OHASHI YOKO ET AL: "Xenon Exhibits Antinociceptive Effect on the Formalin Test in Newborn Fischer Rats." ANESTHESIOLOGY ABSTRACTS OF SCIENTIFIC PAPERS ANNUAL MEETING, 2002, Abstract No. A-1291. Annual Meeting of the American Society of Anesthesiologists; Orlando, FL, USA; October 12-16, 2002.

D2: OHASHI YOKO ET AL: "Nitrous oxide exerts age-dependent antinociceptive effects in Fischer rats." PAIN, vol. 100, no. 1-2, November 2002, pages 7-18.

D3: US 2002/068764 A1 (FRANKS NICHOLAS PETER ET AL) 6 June 2002.

D4: OHARA AKITOSHI ET AL: "A comparative study of the antinociceptive action of xenon and nitrous oxide in rats" ANESTHESIA AND ANALGESIA, vol. 85, no. 4, 1997, pages 931-936.

- 1.1 Unless indicated, reference is made to the passages indicated in the international search report.
- 1.2 The current assessment is based on the assumption that all claims enjoy priority rights from the filing date of the priority document. If in the European phase it turns out that this is not correct, the documents D1 and D2 cited in the international search report could become relevant for the assessment of novelty and inventive step of the present application .

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB 03/03391

**2. Novelty (Art. 33(2) PCT) and Inventive Step (Art. 33(3) PCT)**

- 2.1 Present claims 1-16 concern the use of xenon for providing analgesia in a newborn subject and/or fetal subject.
- 2.2 D3 discloses that Xenon has neuroprotective effect on NMDA-injured neonatal glial and fetal neuronal cells.  
D4 shows a comparative study of the antinociceptive action of Xenon and nitrous oxide in adult rats.

None of the prior art documents of the international search report discloses or suggests the use of xenon as antinociceptive for newborn or fetal subjects. Therefore, the subject-matter of present claims 1-16 is considered novel and inventive in the light of the prior art documents cited in the international search report either taken alone or in combination.

**3. Industrial applicability (Art. 33(4) PCT)**

- 3.1 Present claims 1-10 are susceptible of industrial application and thus do not contravene Art. 33(4) PCT.
- 3.2 For the assessment of the present claims 11-16 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.